

COUNTRY BRIEFING
NOVEMBER 2018

Switzerland



INTRODUCTION

The Statelessness Index (<https://index.statelessness.eu/>) is an online comparative tool that assesses European countries' law, policy and practice on the protection of stateless people and the prevention and reduction of statelessness against international norms and good practice. The Index was developed and is maintained by the [European Network on Statelessness \(ENS\)](#)¹, a civil society alliance of over 120 organisations and individuals in 40 countries working to end statelessness and ensure that stateless people in Europe access their rights.

ENS worked with individual members and [humanrights.ch](#)² to research and compile comparative information on statelessness in [Switzerland](#).³ This briefing summarises the findings on how Swiss law, policy and practice performs against international norms and good practice on the protection of stateless persons and the prevention and reduction of statelessness. It covers five thematic areas – International and Regional Instruments, Stateless Population Data, Statelessness Determination and Status, Detention, and Prevention and Reduction – and makes a series of recommendations to the Swiss Government for reform in priority areas.

To be stateless is not to be considered as a national by any state under the operation of its law. It is a legal anomaly that prevents more than 10 million men, women and children around the world - and more than half a million in Europe - from accessing fundamental civil, political, economic, cultural and social rights.

INTERNATIONAL AND REGIONAL INSTRUMENTS

Different international and regional treaties provide for the protection of stateless persons and the prevention and reduction of statelessness. Switzerland is party to the [1954 Convention Relating to the Status of Stateless Persons](#) and to most relevant human rights instruments. However, Switzerland has still not ratified the [1961 Convention on the Reduction of Statelessness](#) and is neither party to the 1997 [European Convention on Nationality](#) nor the 2006 [Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession](#). Moreover, the Swiss Government's reservations to the UN Convention on the Rights of the Child could have implications for stateless persons, as they relate to family reunification rights for certain non-citizens (Article 10), the separation of children from adults in situations of deprivation of liberty (Article 37) and children's rights in the criminal justice system (Article 40).⁴

The Swiss Government should consider ratifying the 1961 Convention on the Reduction of Statelessness, the European Convention on Nationality and the Convention on the Avoidance of Statelessness in relation to State Succession.

STATELESS POPULATION DATA

States should collect reliable quantitative and qualitative data on statelessness and adopt and strengthen measures to count stateless persons on their territory.⁵ The availability of reliable data is linked to whether procedures to identify and determine statelessness exist. UNHCR counted 62 stateless persons in Switzerland in 2016, not including stateless persons who are refugees.⁶ The Swiss Government publishes two different data sets on the stateless population in Switzerland, one by the State Secretariat for Migration (SEM) and the other by the Federal Statistical Office. The Government uses the categories 'stateless', 'without nationality' and 'state unknown' in the data sets. The definitions of these categories are not publicly available and potentially overlap. Statistical information on immigration detention and removals are not publicly available.

The Swiss Government should take concrete steps to improve the recording of statelessness, including by harmonising and defining the statistical categories used by the different government agencies and at different administrative levels (Federal and Cantonal). It should ensure that registration officials are trained to accurately identify and record statelessness. It should moreover publish data on potentially stateless persons in immigration detention and in removal procedures.



STATELESSNESS DETERMINATION AND STATUS

To be able to provide the protection and rights enshrined in the 1954 Convention, including a residence permit and the right to work, study and facilitated naturalisation, State parties need to be able to identify stateless people on their territory. UNHCR recommends that this is best fulfilled through a dedicated statelessness determination procedure.⁷ Switzerland has a procedure to determine statelessness. However, that procedure is not formalised in law but simply governed by general administrative practice. Importantly, Swiss authorities apply a rather restrictive definition of a stateless person, which is not in line with international standards. The statelessness determination procedure has strict requirements, which are difficult to meet without the assistance of a lawyer and interpreter. For example, an application to the procedure must be submitted in writing, be reasoned, and include reliable evidence. In practice the burden of proof is primarily on the applicant who must provide documents to demonstrate that they are stateless. The application of the standard of proof by the authorities in practice is inconsistent. There is little available information on how to regularise your status as a stateless person. While there is no fee for the procedure, free legal aid is in principle not granted at first instance. There is no automatic legal admission or residence status granted during the course of the procedure. If a person is recognized as stateless that person is granted a residence permit granting access to health care, social security and employment as well as, upon application, a travel document. After 10 years of legal residence a permanent residence permit may be granted at the discretion of the authorities. Facilitated naturalisation is possible for stateless people married to Swiss citizens and for children who meet additional criteria, but not for other adults.

The Swiss Government should establish in law a dedicated, formalised statelessness determination procedure in line with UNHCR Guidelines and good practice. It should apply the definition of statelessness enshrined in Article 1 of the 1954 Convention. All stateless persons should have access to facilitated naturalisation.



DETENTION

Stateless persons face a heightened risk of arbitrary detention particularly where procedural safeguards to identify and determine statelessness and related barriers to removal are lacking.⁸ Protections against the arbitrary detention of stateless people are limited in Switzerland. Statelessness is not considered a juridically relevant fact in decisions to detain, a country of removal does not need to be identified prior to detention, and detention can be ordered while the authorities are establishing a person's identity. Some procedural safeguards are in place, such as: a maximum time limit for detention, judicial oversight within 96 hours of the detention order, access to free legal aid, and access to remedies to challenge the detention. The law does provide for some alternatives to detention, but these are not systematically considered prior to detention. A referral to the statelessness determination procedure is possible if the person lodges a claim for statelessness, but there is no formal referral mechanism.

The Swiss Government should take further steps to protect stateless persons from arbitrary detention by introducing a formalised statelessness determination procedure, embedding consideration of statelessness as a juridically relevant fact in all decisions to detain and ensuring clear referral routes from detention and returns proceedings to the statelessness determination procedure.



PREVENTION AND REDUCTION

International law enshrines the obligation to prevent and reduce statelessness. Positively, Swiss law contains safeguards to prevent statelessness in the case of foundlings, adopted children and children born to Swiss nationals abroad. However, there is no safeguard in law for otherwise stateless children born in Switzerland. The only route to Swiss nationality for children born stateless in the country is a naturalisation procedure based on five years' legal residence and other integration criteria, which is only accessible for children up to the age of 18. This leaves some children born in Switzerland stateless for at least five years. There is no facilitated way of acquiring Swiss nationality for adult stateless persons.

Every child's right to legal identity and nationality is not only essential to the prevention and reduction of statelessness but is a core principle of international law.⁹ Birth registration must be free and take place immediately after birth without delay. Although Swiss law stipulates that all children must be registered immediately, some face barriers to birth registration in practice due to the parents' missing documents or irregular status resulting in fear of detention and deportation. Civil registry officials are prohibited from reporting unregistered people to the migration authorities when registering births. Late registration is possible in law and practice and there are no fees or other barriers.

The Swiss Government should consider amending the law to ensure that all children born on its territory who would otherwise be stateless acquire a nationality at birth, and ensure that the status of parents does not prevent immediate birth registration.

SUMMARY OF RECOMMENDATIONS

- Accede to the 1961 Convention on the Reduction of Statelessness.
- Accede to the 1997 European Convention on Nationality.
- Accede to the 2006 Convention on the Avoidance of Statelessness in Relation to State Succession.
- Harmonise and disaggregate quantitative data on stateless persons in Switzerland and build the capacity of officials to accurately identify and record statelessness across government agencies at all administrative levels.
- Consider carrying out a comprehensive exercise to accurately map the stateless population in Switzerland.
- Formalise the statelessness determination procedure in law and in line with UNHCR guidelines and good practice in order to give full effect to the rights enshrined in the 1954 Convention to stateless people in Switzerland.
- Put in place robust mechanisms to identify and protect stateless people from arbitrary detention, including a referral mechanism to the statelessness determination procedure as well as residence rights for those released from detention to protect against re-detention.
- Amend the Federal Act on Swiss Citizenship to ensure that all otherwise stateless children born in Switzerland acquire a nationality at birth.
- Facilitate naturalisation for all stateless persons.
- Ensure that the status of parents does not prevent immediate birth registration.

ENDNOTES

- 1 <https://www.statelessness.eu>
- 2 Humanrights.ch is a Swiss non-profit organization with the main aim of gathering and providing information, raising public awareness, monitoring state action and counselling on human rights issues and the human rights situation in Switzerland. Lead Country Researcher for the Statelessness Index in Switzerland are Jyothi Kanics, ENS Advisory Committee Member, and Barbara von Rütte, humanrights.ch.
- 3 <https://index.statelessness.eu/country/switzerland>
- 4 https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&lang=en
- 5 Conclusions of the Council of the European Union and the Representatives of the Governments of the Member States on Statelessness, 4 December 2015, <http://www.consilium.europa.eu/en/press/press-releases/2015/12/04/council-adopts-conclusions-on-statelessness/>
- 6 UNHCR (2018) Global Trends 2017, <http://www.unhcr.org/uk/statistics/unhcrstats/5b27be547/unhcr-global-trends-2017.html>
- 7 UNHCR (2014), Handbook on Protection of Stateless Persons, <http://www.unhcr.org/uk/protection/statelessness/53b698ab9/handbook-protection-stateless-persons.html>
- 8 ENS (2017) Protecting Stateless Persons from Arbitrary Detention: An Agenda for Change, https://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/ENS_LockeInLimbo_Detention_Agenda_online.pdf
- 9 UN Convention on the Rights of the Child, Article 7.

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